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Requirements For Constitutional Instruction In South Carolina

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Political Scientists in South Carolina need to be aware of the state law requiring the teaching of the United States Constitution. Universities, colleges, and high schools presently do not comply with state public laws 21-420 through 21-423. In many cases this is not a purposeful omission from their program, but rather is caused by lack of awareness of the law. This paper is designed to explore some of the political, legal, and pedagogical ramifications of the law.

The Law

21-420. Study of United States Constitution requisite for graduation; proof of loyalty.—All high schools, colleges and universities in this State that are sustained or in any manner supported by public funds shall give instruction in the essentials of the United States Constitution, including the study of and devotion to American institutions and ideals, and no student in any such school, college or university shall receive a certificate of graduation without previously passing a satisfactory examination upon the provisions and principles of the United States Constitution, and if a citizen of the United States, satisfying the examining power of his loyalty thereto. (1952 Code 21-420; 1942 Code 5324; 1932 Code 5324; 1924 (33) 1186.)

21-421. Same; duration of such instruction.—The instruction provided for in 21-420 shall be given for at least one year of the high school, college and university grades, respectively. (1952 Code 21-421; 1942 Code 5324; 1932 Code 5342; 1924 (33) 1186.)

21-422. Same; State Superintendent to enforce; textbooks.—The State Superintendent of Education shall make due arrangements for carrying out the provisions of 21-420 and 21-421. For such purpose the State Superintendent shall prescribe suitable texts adapted to the needs of the high schools, universities and colleges for the instruction required under 21-420 and 21-421. (1952 Code 21-422; 1942 Code 5324; 1932 Code 5342; 1924 (33) 1186.)

21-423. Same; failure to comply cause for removal.—Willful neglect or failure on the part of any public school superintendent, principal or teacher or the president, teacher or other officer of any

high school, normal school, university or college to observe and carry out the requirements of 21-420 to 21-422 shall be sufficient cause for the dismissal or removal of such person from his position. (1952 Code 21-243; 1942 Code 5324; 1932 Code 5342; 1924 (33) 1186.)¹

History

Prior to the 1920's the State government in South Carolina had been on the periphery of educational policy making. In 1921 the first compulsory attendance law was passed by the General Assembly. It required all children between eight and fourteen to attend school.² The state also got more deeply into school financing. The most hotly debated bill in the 1924 General Assembly session was the 6-0-1 law. This law provided state funds to pay for six months of the operation of public school in every county or district in the state and required that the county pay for at least one additional month of expenses. A second significant bill which became law in 1924 was one requiring a seven mill tax increase for schools along with minimum salaries for teachers. This act also gave the state power to supervise and set standards for the schools. Thus, in the early 1920's the state had become deeply involved in public education. It was only a logical step, therefore, to prescribing curriculum and teacher certification.³

James Swinton Whaley of Charleston County was elected to the General Assembly in 1923. Though by occupation a cotton farmer, he also had an interest in education. He was a trustee of the University of the South at Sewanee and also a trustee for the Edisto Island school system.⁴ In the 1924 General Assembly, Mr. Whaley introduced the bill requiring Constitutional instruction in all state schools. The law proceeded through the General Assembly with little debate. An attempt on the floor of the House to strike out the enacting words was defeated 22 to 68. An amendment was added, however, which excluded foreign students from proving their loyalty.⁵

Each step of passage through the House and Senate was duly recorded in *The State* newspaper, but none was considered noteworthy

¹ State of South Carolina, *Code of Laws* 1962, 21-420, 21-423. All quotations not footnoted come from the above law.

² State of South Carolina, *Acts and Joint Resolutions of the General Assembly* 1921. No. 430, pp. 754-755.

³ David Duncan Wallace, *South Carolina, A Short History 1520-1948*, p. 692.

⁴ J. Wilson Gibbs, *Legislative Manual, General Assembly of South Carolina* 1924, p. 83.

⁵ State of South Carolina, *Records of the House of South Carolina* 1924, pp. 1008-1009.

enough to receive headline treatment. The governor signed the bill into law on March 26, 1924. This was not even reported in *The State*.

Compliance

The duration of instruction was prescribed as "for at least one year." In 1924 all state colleges were divided into two terms per year. In the college catalogues, courses listed as one year were taken both semesters. Most college courses met three times a week and carried three credits for graduation. All political science courses at state colleges fell into this classification. There were classes which met one, two, or five times a week and carried one, two, or five credits respectively, but these were usually not standard academic subjects. It is logical to assume, therefore, that the intent of the law was a two semester course which met three times a week.

The law does not specify that the course required be a political science or government course. It states that the institution "shall give instruction in the essentials of the United States Constitution, including the study of and devotion to American institutions and ideals." It further stipulates that these courses should include "provisions and principles of the United States Constitution." Courses in American history or economics could be substituted, if the content of these courses complied with the law. The best evidence I have been able to obtain is that present courses in these fields do not comply and most professors make no attempt to make these courses comply. If the United States Constitution is dealt with at all in these courses it is peripherally. This point is particularly important for as shall be shown later several state schools claim to comply with such courses.

Two semesters of political science does not meet the spirit of the law either, unless courses dwell on the fundamentals of the American Government or United States Constitution.

The law clearly applies to all high schools in the state which classify as public high schools because they receive their support from state funds. The University of South Carolina, Clemson University, South Carolina State University, The Citadel, the College of Charleston, Winthrop College, South Carolina Medical University, Lander College, and Francis Marion College, are covered by the provisions of this act. It is not clear whether the act covers the technical schools and two year branches of Clemson University and The University of South Carolina. On other matters relating to such institutions, the state has attempted to clarify the term "state supported college" as follows:

"State-supported College defined.—For the purposes of this article, a state-supported college or university shall be defined as any

two year or four year college or university supported by the state of South Carolina, including colleges or universities offering post-graduate or professional courses of study.”⁶

Further questions arise from the statement “in any manner supported by public funds.” For a number of years private and religiously affiliated colleges throughout the state have received state funds for the support of special programs. The Commission of Higher Education has financed In Service Teacher Training Projects at Columbia, Converse, Wofford, Furman, Newberry and Presbyterian. The possibility exists that these schools may receive indirect aid from the state not tied to specified programs. Both the words “sustained” and “supported” mean more than aiding or furnishing relief. They tend to connote maintaining or allowing to continue to exist. Thus, one may argue that institutions would not fall under the provision of this law as long as the institution is not forced to close or drastically curtail its operations without state funds. In the area of tax law the word support means to provide more than half of one’s income. On the other hand, the law does not say “supported by public funds” it says “in any manner supported by public funds.”

The law states that the institutions “shall give instructions.” Whaley’s law does not say that the student must “take” but neither does it exclude the student from taking by using a term like “shall offer.” The intent here is obviously that the student shall take the course but the requisite for graduation is “passing a satisfactory examination” not passing the course or courses. At the present time several state colleges and universities use the College Level Exemption Program, better known as CLEP. One of these exams is for a three hour American government course. Since exemption procedures presently substitute for taking courses, and the exemption test is a comprehensive examination, passing this exam in the eyes of the law would be equal to taking a 3 hour American government course.

A problem arises from noncompliance by state colleges and universities in the past. Since these institutions are not authorized to issue certificates of graduation to students who have not complied, does this make all degrees bestowed from 1924 to the present invalid? This would not be the case since such action would punish the students while South Carolina Law 21-423 states that punishment shall be directed towards teachers and administrators. Only a person responsible for an act can be held accountable for failing to act; the examining powers would be the teachers and

⁶ State of South Carolina, *Code of Laws of South Carolina 1970, Supplement*, 22-74, p. 27.

president of the college or university, or appropriate officials in public schools.

These administrators and teachers are let off the hook for past misdeeds if they were not aware of the law—"willful neglect or failure . . . shall be sufficient cause for the dismissal or removal of such person from his position." Unfortunately, it is too late for those of you who are reading this paper.

Loyalty

Probably the most controversial aspect of the law is the phrase, "satisfying the examining powers of his loyalty thereto." There is no precise court precedent for this loyalty provision. Successful constitutional challenges could probably be made on the loyalty provision from a number of different directions.

The loyalty aspect of the law could first be challenged under the precedent set by *Valentine v. Independent School District of Casey*. It was decided in this case that the governing body of an educational institution could not make demands that were requisite for graduation which were not related to educational requirements. Once the student had completed the prescribed course of study, the student was entitled to a diploma.⁷

Loyalty tests usually fall into two categories—those involving an oath as a test of loyalty and those involving membership in subversive organizations. Since the South Carolina law does not specify either of these, or any other tests, it is likely that the criteria used would not stand up in court. *Baggett v. Bullitt* states that a law must clearly define what action is to be considered subversive.⁸

Thus, the South Carolina law seems vague and many loyalty laws have been declared unconstitutional on the grounds of "vagueness." The South Carolina law is also not clear whether the examining power is charged by this law to take some positive action to see if a person is loyal to the United States or if the examining power has no reason to believe that the person is not loyal to the United States, that this is enough to be "satisfying." It is unwise to ever count solely on a "vagueness" decision because the guidelines on these have themselves proved vague.

The loyalty oath is probably the most widely used test of loyalty. In *Beilan v. Board of Education, School District of Philadelphia*, it was decided that a person could not be declared disloyal and thus dismissed from employment solely for exercising the rights provided in the Fifth

⁷ *Valentine v. Independent School District of Casey*, 183 NW 434, Iowa, 1921.

⁸ *Baggett v. Bullitt*, 377 U. S. 360, 1964.

Amendment.⁹ *West Virginia State Board of Education v. Barnett* concerned the pledge of allegiance and the salute to the flag, but it can apply to any other demonstrations of loyalty as well. All such acts were held not to be a test of loyalty at all. In the words of Justices Black and Douglas, "words uttered under coercion are proof of loyalty to nothing but self interest."¹⁰

Membership in subversive organizations is another test of loyalty. It must be proved that a person joined the organization knowing that it was subversive and entered into employment to further the subversive organizations ends.¹¹ In addition, in order to be justified in dismissing someone from employment it must be proved that continuing to work in his position causes a "clear and present danger." The Supreme Court went so far in *United States v. Robel* as to say that a member of the Communist Party could work in a defense plant as long as he was not handling matters of national security.¹² It would indeed be difficult to prove that the security of the United States was more at stake because someone received a high school diploma or a college degree in the State of South Carolina than in working for a defense plant.

While most loyalty cases have involved employment, there are some other decisions that relate to loyalty. A California statute required veterans to swear loyalty to the United States before they would be given veterans property tax exemptions. In the case challenging this law *Speiser v. Randall* the court not only declared the law unconstitutional but said there was a difference between loyalty in employment and other loyalty provisions. The court distinguished cases upholding statutes requiring loyalty oaths of public employees on the grounds that "the principle aim of those statutes was not to penalize political beliefs but to deny positions to persons supposed to be dangerous because the position might be misused to the detriment of the public."¹³ The refusal to grant a high school diploma or a college degree in South Carolina schools would fall much more into the category of penalizing a person for political beliefs rather than protecting the United States or its people from any substantive danger.

Original Compliance

In 1923 the University of South Carolina did not offer courses in political science and the American history courses were not required for

⁹ *Beilan v. Board of Education, School District of Philadelphia*, 357 U. S. 399, 1958.

¹⁰ *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, 1943.

¹¹ *Elfbrant v. Russell*, 38 U. S. 11, 1966.

¹² *United States v. Robel*, 389 U. S. 258, 1967.

¹³ *Speiser v. Randall*, 357 U. S. 513, 1958.

graduation. Whaley's Law did not affect course offerings or requirements in any way. The first American government courses were offered in the curriculum at the University of South Carolina in 1932-33. In that year State and Local Government of the United States was listed in the History Department.

South Carolina State College did not seem to know about the law either. Prior to 1924 no government courses were taught. United States History, which included civics, was offered but not required. This course was dropped from the college catalogue in 1926.

In 1930 at South Carolina State College a two semester government course was added called Government in Citizenship. This was required for graduation for all majors except those preparing to be teachers. It should be noted that the main thrust of the original law was directed toward those preparing to teach.

Winthrop College was aware of the change and thought they complied to the letter of the law according to Mrs. Edwin Hobbs who was president of the student body in 1924. Prior to the passing of the Law, an introductory course in economics was required for all students. After passage of Whaley's law, all students were required to take a one term course called American Government and Politics in place of the economics course. However, this was not a new course, since it existed in the Political Science Department prior to the passage of the law. By 1929 Winthrop had undergone a change in the personnel in the department. The American government course became an elective.

Clemson came very close to complying even before the law was passed. Students were required to take a course, History I, which was entitled, American Government. In 1926 this requirement was changed for most majors to either History 11, called Citizenship, or History 13, called Political Science. No major required both. It is doubtful that this change was made with Whaley's law in mind since the requirement for graduation was dropped in Architecture. During the 1930's most other majors at Clemson followed suit.

Thus, Whaley's Law had little effect on increasing the offerings in courses on the United States Constitution at South Carolina colleges and universities. Only at Winthrop College did it lead to a change in graduation requirements and there the change was soon forgotten.

Present Compliance

At The Citadel, the prescribed course of study varies by academic discipline. All areas require 6 semester hours of American history. The course description is political enough to give some credence to the pos-

sibility of compliance—"The framing of the Constitution, the development of Political Parties . . . special emphasis on understanding the nature of American democracy." In addition to the American history requirement, Business Administration majors must also take one semester of American government. History and political science majors are required to take a number of hours in American oriented political science courses. In a very liberal interpretation of the law, The Citadel could be considered in compliance.¹⁴

The graduation requirements at Clemson University vary from college to college and between majors within the various colleges. Most majors do not require American government. The exceptions are political science, forestry, and administrative management which require at least 6 hours of American government. Several other majors require either one course in American government or a one or two semester course in American history. But only 16 of 47 undergraduate curricula require any American government or history.

No courses related to the study of the United States Constitution are required for graduation at the College of Charleston.

Francis Marion College probably comes as close as any state institution in meeting the constitutional requirements. All students must either take a three-hour United States government course or a one-hour United States Constitution course. While this does not meet the letter of the law because these are one semester instead of full year courses, it is the only school where the student must take a course that one can be reasonably sure would include a study of the Constitution in order to graduate.

At the present time at Lander College no course covering the United States Constitution is required for graduation. Students must take 12 hours in the social sciences which may include American government or American history, but these are not required.

All students at South Carolina State College are required to take courses prescribed under its Freshman Studies Program. This program includes two semesters of American history. A description of this course in the catalog is rather political. "It is designed to give the student a comprehensive grasp of the political, constitutional, and socio-economic development of the United States."

Graduation requirements at the University of South Carolina vary from college to college and from major to major within the colleges. Several majors require one semester of American government. The majority

¹⁴ In examining compliance at state institutions, their respective 1972-73 catalogues were used in all cases except for Lander College where the 1973-74 catalogue was used, as this was the first year Lander was under state control.

of majors do not require American government or any other course which might meet the requirement.

Winthrop College claims to satisfy the state constitutional requirement by allowing the student an option of either a one hour United States Constitution course, a three hour American government course, a six hour survey of United States History or a three hour course entitled, Introduction to Political Economy. All of the options are supposed to satisfy the state constitutional requirement. But the textbooks used in American History 211 - 212 for the last three years do not even cover the basics of the Constitution.¹⁵ The teachers of these courses and the students who take them both admit that the Constitution is only lightly touched as it deals with historic events and trends and that no comprehensive test on the Constitution is given as part of the course. In the economics course, one professor claims to have taken a week off and asked his students to read the Constitution. He says that he gave a test on it on Friday of that week and everybody in the class passed. The required Political Science courses, while dealing with the Constitution, last only one semester.

It seems evident that no state institution strictly enforces or carries out the law covering the teaching of the United States Constitution.

High Schools

While the main thrust of this study is how the law effects colleges, I think it is interesting to note that high schools also fall under the provisions of the law and many controversies have developed in high school interpretations and compliance. Prior to 1924, the South Carolina Department of Education did not require any course in the public schools. However, they did print approved textbooks for courses that were likely to be taught. Wallace's *Civil Government in South Carolina and the United States* was an approved text in tenth grade civics.¹⁶

The State Board of Education was very much aware of the new law and disapproved of it. It felt that the General Assembly was infringing upon its areas of concern. After recording verbatim the law requiring instruction in intoxicating liquors and physical education as well as the one concerning the United States Constitution, the 1938 manual comments as follows:

¹⁵ Thomas Bailey, *The American Spirit*, second edition, (D. C. Heath and Company, 1968). John Blum and others, *The National Experience*, second edition, (Harcourt, Brace and World, Inc., 1968). John A. Garraty, *The American Nation*, second edition, (Harper and Row, 1971).

¹⁶ State of South Carolina, Department of Education, *Course of Study For Public Schools*, July 1, 1922 to June 30, 1927.

"The foregoing illustrate a tendency to have a curriculum prescribed by laymen for the high schools.

There is no doubt that each law is an attempt on the part of the General Assembly to have the schools to perform worthwhile purposes. However praise worthy of the purposes, the fact remains that the State Board is the state's delegated authority for prescribing course of study. Hence, the State Board should be held responsible for appropriate courses of study. Yet, hardly can the Board be held responsible when courses are prescribed by the lawmaking body that grants the power to the Board. It is believed by this Committee that spasmodic and haphazard legislative courses of study—and such they are when introduced and passed with no reference to previous laws and with no consideration for a teachable program—are handicaps to the well ordered, unified and flexible curriculum for all the students."

The Board goes on to say that legally it is given the absolute internal authority over curriculum in the schools and that acts by the General Assembly result in "inappropriate legislation."¹⁷

With time, the attitude of the State Board of Education became less hostile towards these laws. In the standards for accredited high schools of South Carolina, 1955 edition, the following was the interpretation of the law:

"as provided by the Code of Laws of South Carolina, all high school students, in order to qualify for a state high school diploma, must complete its study and pass satisfactorily an examination upon the provisions and principles of the United States Constitution and of American institutions and ideals. This instruction shall be given for a period of at least one year. Also, every student must satisfy the examining power of his loyalty thereto.

The above requirement can most satisfactorily be met by devoting part of the American history course to a careful study of the Constitution."

To further carry out the intentions of the above regulation, it is suggested that wherever possible high schools offer a course in citizenship

¹⁷ State of South Carolina, The State Board of Education, *A Plan for the State Board of Education with Respect to a Program of Studies for High Schools of South Carolina*, 1938.

on the twelfth grade level as well as a course in civics on the ninth grade level.¹⁸

The most recent standards for accredited high schools in South Carolina specify that schools should offer civics in the ninth grade for eighteen or thirty-six weeks or should offer American government in the tenth, eleventh or twelfth grade for eighteen or thirty-six weeks. It is possible, however, for a student to get a high school diploma without taking one of these courses. Three units of social studies are required. The only course prescribed, is a thirty-six week course called the United States History and Constitution, which is required in the eleventh grade of all students. The Manual on Standards says that it is offered to complete requirements of the Constitution in the South Carolina Code of Laws—

“to complete a study of, and pass satisfactorily an examination on the provisions and principles of the United States Constitution and of American institutions and ideals. This instruction shall be given for a period of at least one year in connection with the required South Carolina United States History course.”¹⁹

The approved history texts for this eleventh grade course do not include a comprehensive study of the United States Constitution.

Ramifications to the Discipline of Political Science

The most obvious ramification of a strict enforcement of the law would be a tremendous increase in the number of students in basic American government courses. Approximately half of the students graduating from South Carolina colleges take at least one semester of American government. At the present time throughout the state, roughly half of the credit hours produced in the area of Political Science are in the American government classes. It therefore becomes simple arithmetic to discover that the number of credit hours produced could markedly increase enforcement of the constitutional requirement.

A pedagogical problem would be caused by strict enforcement. Is it preferable to teach small numbers of students who want to take American government or is American government such a vital subject that everyone needs to be corralled into the classroom for one or two semesters? Re-

¹⁸ ———, *The Document of Standards for Accreditive High Schools of South Carolina*, 1955, p. 411.

¹⁹ State of South Carolina, Department of Education, *Standards for Accreditive High Schools of South Carolina*, 1971, p. 55.

quired courses are counter to the way many feel trends in general education requirements should be moving. Most colleges in the state seem to be moving towards more flexibility in required courses for graduation.

The increase in the number of students taking political science should mean a comparable increase in the number of teachers needed to teach political science. Graduate schools of political science like most other academic disciplines produced more new Ph.D.'s than the market could absorb during the 1960's and this trend seems to be continuing into the 1970's. While this glut on the market has not been as evident in the South as in some other areas of the country, the overflow has hit our region as anyone who has checked the placement service at regional meetings can testify. The strict enforcement of the law could render a service to the discipline of political science.

An increase in the number of students should mean that academic administrations at state colleges would add enough new personnel to adequately teach this influx of students. But unfortunately, many of us know that should does not always translate into affirmative action. A temporary result of compliance would likely mean the enlargement of already large classes in introductory American government and/or a limiting of offerings in advance courses in political science, in order to free personnel to teach new courses. In the short run either of these results could mean less time and attention to the majors.